intangible injury. This expression must necessarily be in terms of money, but since money has only a relative value, it is proper to take the general price level into account in making the award. See *Hurst* v. *C. B. & Q. R. Co.*, 280 Mo. 566, 219 S. W. 566; *Noyes* v. *Des Moines Club*, 186 Iowa, 378, 170 N. W. 461. To be accurate, it seems that it is the purchasing power at the time the pain occurred which should be considered, for damages should be computed as of the time of the loss. *Cf.* 34 HARV. L. REV. 422. But see *Rigley* v. *Prior* 233 S. W. 828 (Mo.). Similarly, where the element under consideration is loss of earnings, damages should be computed as of the time of the incapacity; but here it is not the purchasing power of the dollar, but the current standard of wages, which should govern. *Canfield* v. *C. R. I. & P. Ry. Co.*, 142 Iowa, 658, 121 N. W. 186. *Cf. McNichol* v. *P. Burns & Co., Ltd.*, [1919] 3 W. W. Rep. 621; *Tankersley* v. *Lincoln T. Co.*, 104 Neb. 24, 175 N. W. 602; *Roeder* v. *Erie R. Co.*, 164 N. Y. Supp. 167 (Sup. Ct.). But see *Hurst* v. *C. B. & Q. R. Co., supra; L. & N. R. Co.* v. *Williams*, 183 Ala. 138, 62 So. 679. The instruction in the principal case is open to criticism for failing to point out this distinction; but since the verdict was for a lump sum, and since in the matter of damages jurors are chancellors, it is hard to say that the error was prejudicial.

EASEMENTS — REMEDY OF GRANTEE OF EASEMENT AGAINST OWNER OF SERVIENT TENEMENT WHO FAILS TO PAY TAXES. — The defendant's land was subject to an easement of passage in favor of the plaintiff's adjoining land. The servient tenement having been sold for delinquent taxes, the plaintiff seeks an order that the defendant pay the taxes and redeem the land. The defendant had not covenanted to pay taxes. *Held*, that the order be denied. *Campbell, Wilson & Horne, Ltd.* v. *Great West Saddlery Co., Ltd.*, 59 D. L. R. 322 (Alta.).

If the plaintiff's easement is not cut off by the tax sale it is evident that he needs no equitable relief. Such would be the case if the servient tenement was assessed at its value subject to the easement. *Jackson* v. *Smith*, 153 App. Div. 724, 138 N. Y. Supp. 654, aff'd, 213 N. Y. 630; *Tax Lien Co.* v. *Schultze*, 213 N. Y. 9, 106 N. E. 751. See also *Hall* v. *McCaughey*, 51 Pa. St. 43; *Tabb* v. *Comm.*, 98 Va. 47, 34 S. E. 946. However, if the land was assessed at its fee simple value, without reference to the particular interests therein, the land itself must respond for the taxes. If all the proceedings are regular, the tax deed passes a title free from all incumbrances whatsoever. *Hanson* v. *Carr*, 66 Wash. 81, 118 Pac. 927. See *Hill* v. *Williams*, 104 Md. 595, 65 Atl. 413. Even under such circumstances, there would seem to be no basis for equitable relief. Non-performance of an affirmative statutory duty affords no cause of action to an individual incidentally harmed. See *Cowley* v. *Newmarket Local Board*, [1892] A. C. 345; *City of Rochester* v. *Campbell*, 123 N. Y. 405, 25 N. E. 937. See also *Durnherr* v. *Rau*, 135 N. Y. 219, 32 N. E. 49. It should be noted that the plaintiff is not without means of protecting his interest. He may himself pay the taxes. See *Bennett* v. *Hunter*, 9 Wall. (U. S.) 326; BLACK, TAX TITLES, 2 ed., § 161. He may then bring an action against the delinquent for money paid to his use. *Graham* v. *Dunigan*, 2 Bosw. (N. Y.) 516 (Sup. Ct.). See KEENER, QUASI-CONTRACTS, 1 ed., 388–391. Furthermore, if there is an express covenant by the grantor of the easement to pay the taxes for its protection, it should be enforced in equity, since a resort to the legal remedy above would involve hardship to the covenantee. *Cf. Reilley* v. *Roberts*, 34 N. J. Eq. 299.

EQUITY — JURISDICTION OVER NONRESIDENTS — POWER OF EQUITY TO ORDER A NONRESIDENT DEFENDANT TO DO A POSITIVE ACT IN ANOTHER STATE. — The plaintiff, a resident of New York, and the defendant, a resident of

California, were joint owners of a thoroughbred stallion. The defendant had the possession and use of the stallion in California during the seasons of 1919 and 1920 under an agreement whereby the plaintiff was to have him for use in Kentucky during the seasons of 1921 and 1922. To have become acclimated and fit for the season of 1921 the stallion should have been shipped to Kentucky by September, 1920, but the defendant refused to ship him. At the opening of the 1921 season the plaintiff sued in New York, praying a mandatory injunction ordering the defendant to ship the stallion to Kentucky, and the appointment of a receiver with power to proceed to California to get the stallion. The defendant was personally served with process in New York and appeared by attorney. *Held*, that the prayer be granted. *Madden* v. *Rosseter*, 114 Misc. 416, 187 N. Y. Supp. 462, aff'd, 187 N. Y. Supp. 943 (App. Div.).

For a discussion of the principles involved, see NOTES, *supra*, p. 610.

EXTRADITION — RIGHT TO TRY MAN MISTAKENLY SEIZED BY ARMY ON BANDIT HUNT. — A troop of cavalry under orders from the War Department crossed the Mexican border on a "hot trail" after bandits. They seized the defendant, mistaking him for a bandit, and brought him back to the United States. It appeared that the procedure was not within any rights conferred by the existing treaty with Mexico providing for the extradition of fugitives from justice. The mistake discovered, the defendant was released by the army but was immediately seized, by virtue of a prior arrangement, by Texas rangers, and was indicted for a murder previously committed in Texas. His plea to the jurisdiction was overruled. He was convicted, and appealed. *Held*, that the conviction be reversed. *Dominguez* v. *State*, 234 S. W. 79 (Tex. Cr. App.).

Apart from treaty, the obligation of one nation to another to surrender a fugitive from justice is an imperfect one, resting on comity. See WHEATON, INTERNATIONAL LAW, Dana's ed., § 115. If surrendered, the fugitive may be tried only for the specific offense he was surrendered to answer for, the limitation being implied as a condition imposed by the surrendering sovereign. See *United States* v. *Rauscher*, 119 U. S. 407, 416. International good faith requires the recognition of the limitation. *Ex Parte Brown*, 148 Fed. 68 (2d Circ.); *Ex. Parte Coy*, 32 Fed. 911 (5th Circ.). But where the seizure is not made under any privilege granted by the foreign sovereign there is no such limitation; and the fugitive may be tried for any and all offenses. *Ker* v. *Illinois*, 119 U. S. 436. In the absence of proof to the contrary, the interest in maintaining international good will should lead the court to assume, as was done in the principal case, that a seizure ordered by the government was authorized by the foreign sovereign, and to respect the limitation which would be imposed if it were. It follows that an actual bandit, seized by the expedition, could not have been tried for another offense. In this case there is a further difficulty, that the defendant, not being a bandit, was not within the express terms of the assumed authority. But since his capture was in the course of a *bona fide* attempt to execute the authority, it seems that neither Mexico's right nor his should be abridged by the mistake.

FEDERAL COURTS — RELATION TO STATE COURTS — WHETHER REVIEW SHOULD BE HAD BY WRIT OF ERROR OR BY *CERTIORARI* — VALIDITY OF STATE STATUTE "DRAWN IN QUESTION." — A Kentucky statute required foreign corporations to comply with certain formalities before doing business within the state. (1915 KY. STATS., § 571.) This statute had always been construed by the Kentucky courts as applying only to intrastate commerce. Without complying with the statute, the plaintiff, a foreign corporation, ordered wheat from the defendant to be delivered in Kentucky on board freight cars. The Kentucky Court of Appeals admitted that if this constituted interstate commerce the statute could not constitutionally be applied; but held that it